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10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Petition to Revoke Probation
Against:

Case No. 2004-46

14 **VERNON ANDREWS**
15 410 Quail Ridge
Irvine, California 92603

**PETITION TO REVOKE
PROBATION**

16 Registered Nurse License No. 461736

17 Respondent.
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19 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Petition to Revoke Probation solely in her official
22 capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of
23 Consumer Affairs.

24 **Registered Nurse License**

25 2. On or about March 31, 1991, the Board issued Registered Nurse License
26 Number 461736 to Vernon Andrews ("Respondent"). The registered nurse license expired on
27 December 31, 2006, and has not been renewed.

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1 further action against his registered nursing license. Said Notice of Violation was sent to
2 Respondent's address of record via certified and first class mail.

3 **FIRST CAUSE TO REVOKE PROBATION**

4 **(Failure to Report in Person)**

5 10. At all times after the effective date of Respondent's probation,
6 Condition 3, stated:

7 Respondent, during the period of probation, shall appear in person at
8 interviews/meetings as directed by the Board or its designated representatives.

9 11. Respondent's probation is subject to revocation because he failed on
10 numerous occasions to comply with Probation Condition 3, referenced above. The facts and
11 circumstances regarding these violations are that Respondent failed to meet with Board
12 representatives on January 12, 2006; March 2, 2006; April 27, 2006; May 24, 2006; and
13 January 26, 2007, as more particularly alleged below.

14 a. On or about January 6, 2006, the Board notified Respondent in
15 writing that under the terms of his probation he was required to attend a meeting with his Board-
16 designated Probation Monitor on January 26, 2007, at the time and place designated in said
17 notice. Said written notice was sent via first class mail to Respondent's address of record.
18 Respondent failed to appear at the scheduled meeting with his Probation Monitor on
19 January 26, 2006, as directed in said notice.

20 b. On or about February 15, 2006, the Board notified Respondent in
21 writing that under the terms of his probation he was required to attend a meeting with his Board-
22 designated Probation Monitor on March 3, 2006, at the time and place designated in said notice.
23 Said written notice was sent via first class and certified mail to Respondent's address of record.
24 Respondent failed to appear at the scheduled meeting with his Probation Monitor on March 2,
25 2006, as directed in said notice.

26 c. On or about April 3, 2006, the Board notified Respondent in
27 writing that under the terms of his probation he was required to attend a meeting with his Board-
28 designated Probation Monitor on April 27, 2007, at the time and place designated in said notice.

1 Said written notice was sent via first class and certified mail to Respondent's address of record.
2 Respondent failed to appear at the scheduled meeting with his Probation Monitor on
3 March 27, 2006 as directed in said notice.

4 d. On or about May 3, 2006, the Board notified Respondent in writing
5 that under the terms of his probation he was required to attend a meeting with his Board-
6 designated Probation Monitor on May 24, 2007, at the time and place designated in said notice.

7 Said written notice was sent via first class mail to Respondent's address of record.

8 Respondent failed to appear at the scheduled meeting with his Probation Monitor on May 24,
9 2006, as directed in said notice.

10 e. On or about December 27, 2006, the Board notified Respondent in
11 writing that under the terms of his probation he was required to attend a meeting with his Board-
12 designated Probation Monitor on January 12, 2007, at the time and place designated in said
13 notice. Said written notice was sent via first class mail to Respondent's address of record.

14 Respondent failed to appear at the scheduled meeting with his Probation Monitor on January 12,
15 2007, as directed in said notice.

16 **SECOND CAUSE TO REVOKE PROBATION**

17 **(Failure to Provide Evidence of a Completed Physical Health Examination)**

18 12. At all times after the effective date of Respondent's probation,
19 Condition 14, stated:

20 Within 45 days of the effective date of this decision, respondent at his
21 expense, shall have a licensed physician, nurse practitioner, or physician assistant,
22 who is approved by the Board before the assessment is performed, submit an
23 assessment of the respondent's physical condition and capability to perform the
24 duties of a registered nurse. Such an assessment shall be submitted in a format
25 acceptable to the Board. If medically determined, a recommended treatment
26 program will be instituted and followed by the respondent with the physician,
27 nurse practitioner, or physician assistant providing written reports to the Board on
28 forms provided by the Board.

25 If respondent is determined to be unable to practice safely as a registered
26 nurse, the licensed physician, nurse practitioner, or physician assistant making that
27 determination shall immediately notify the Board and respondent by telephone,
28 and the Board shall request that the Attorney General's office prepare an
accusation or petition to revoke probation. Respondent shall immediately cease
practice and shall not resume practice until notified by the Board. During this
period of suspension, respondent shall not engage in any practice for which a

1 license issued by the Board is required until the Board has notified respondent that
2 a medical determination permits respondent to resume practice. This period of
suspension will not apply to the reduction of this probationary time period.

3 If the respondent fails to have the above assessment submitted to the
4 Board within the 45-day requirement, respondent shall immediately cease practice
and shall not resume practice until notified by the Board. This period of
5 suspension will not apply to the reduction of this probationary time period. The
6 Board may waive or postpone this suspension only if significant, documented
evidence of mitigation is provided. Such evidence must establish good faith
7 efforts by the respondent to obtain the assessment, and a specific date for
compliance must be provided. Only one such waiver or extension may be
permitted.

8 13. Respondent's probation is subject to revocation because he failed to
9 comply with Probation Condition 14, referenced above. The facts and circumstances regarding
10 this violation are that Respondent failed to provide evidence of a completed physical health
11 examination by the due date of March 13, 2006.

12 **THIRD CAUSE TO REVOKE PROBATION**

13 **(Failure to Participate in Treatment/Rehabilitation Program for Chemical Dependence)**

14 14. At all times after the effective date of Respondent's probation,
15 Condition 15, stated:

16 Respondent, at his expense, shall successfully complete during the
17 probationary period or shall have successfully completed prior to the
commencement of probation, a Board-approved treatment/rehabilitation program
18 of at least six months duration. As required, reports shall be submitted by the
program on forms provided by the Board. If respondent has not completed a
19 Board-approved treatment/rehabilitation program prior to commencement of
probation, respondent, within 45 days from the effective date of the decision, shall
20 be enrolled in a program. If a program is not successfully completed within the
first nine months of probation, the Board shall consider respondent in violation of
21 probation.

22 Based on Board recommendation, each week respondent shall be required
to attend at least one, but no more than five 12-step recovery meetings or
23 equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse
support group as approved and directed by the Board. If a nurse support group is
24 not available, an additional 12-step meeting or equivalent shall be added.
Respondent shall submit dated and signed documentation confirming such
25 attendance to the Board during the entire period of probation. Respondent shall
continue with the recovery plan recommended by the treatment/rehabilitation
26 program of a licensed mental health examiner and/or other ongoing recovery
groups.

27 15. Respondent's probation is subject to revocation because he failed to
28 comply with Probation Condition 15, referenced above. The facts and circumstances regarding

1 this violation are that Respondent failed to provide the Board with evidence of his participation
2 in a treatment/rehabilitation program, such as Narcotics Anonymous, Alcoholics Anonymous,
3 and nurse support group meetings.

4 **FOURTH CAUSE TO REVOKE PROBATION**

5 **(Failure to Participate in the Board's Drug Screening)**

6 16. At all times after the effective date of Respondent's probation,
7 Condition 17, stated:

8 Respondent, at his expense, shall participate in a random, biological fluid
9 testing or a drug screening program which the Board approves. The length of
10 time and frequency will be subject to approval by the Board. Respondent is
11 responsible for keeping the Board informed of respondent's current telephone
12 number at all times. Respondent shall also ensure that messages may be left at the
13 telephone number when he is not available and ensure that reports are submitted
14 directly by the testing agency to the Board, as directed. Any confirmed positive
15 finding shall be reported immediately to the Board by the program and respondent
16 shall be considered in violation of probation.

17 In addition, respondent, at any time during the period of probation, shall
18 fully cooperate with the Board or its representatives, and shall, when requested,
19 submit to such tests and samples as the Board or its representatives may require
20 for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other
21 controlled substances.

22 If Respondent has a positive drug screen for any substance not legally
23 authorized and not reported to the coordinating physician, nurse practitioner or
24 physician assistant, and the Board files a petition to revoke probation or an
25 accusation, the Board may suspend Respondent from practice pending the final
26 decision on the petition to revoke probation or the accusation. This period of
27 suspension will not apply to the reduction of this probationary period.

28 If Respondent fails to participate in a random, biological fluid testing or
drug screening program within the specified time frame, respondent shall
immediately cease practice and shall not resume practice until notified by the
Board. After taking into account documented evidence of mitigation, if the Board
files a petition to revoke probation or an accusation, the Board may suspend
Respondent from practice pending the final decision on the petition to revoke
probation or the accusation. This period of suspension will not apply to the
reduction of this probationary time period.

17. Respondent's probation is subject to revocation because he failed to
comply with Probation Condition 17, referenced above. The facts and circumstances regarding
this violation are that Respondent failed to participate in the Board's drug screening program in
that Respondent failed to register as required for participation in the Board's random drug testing
program.

1 **FIFTH CAUSE TO REVOKE PROBATION**

2 **(Failure to Provide Evidence of a Completed Mental Health Examination)**

3 18. At all times after the effective date of Respondent's probation,
4 Condition 18, stated:

5 The respondent shall, within 45 days of the effective date of this decision,
6 have a mental health examination including psychological testing as appropriate
7 to determine his capability to perform the duties of a registered nurse. The
8 examination will be performed by a psychiatrist, psychologist or other licensed
9 mental health practitioner approved by the Board. The examining mental health
10 practitioner will submit a written report of that assessment and recommendations
11 to the Board. All costs are the responsibility of the respondent.
12 Recommendations for treatment, therapy, or counseling made as a result of the
13 mental health examination will be instituted and followed by the respondent.

14 If respondent is determined to be unable to practice safely as a registered nurse,
15 the licensed mental health care practitioner making this determination shall immediately
16 notify the Board and respondent by telephone, and the Board shall request that the
17 Attorney General's office prepare an accusation or petition to revoke probation.
18 Respondent shall immediately cease practice and may not resume practice until notified
19 by the Board. During the period of suspension, respondent shall not engage in any
20 practice for which a license issued by the Board is required, until the Board has notified
21 respondent that a mental health determination permits respondent to resume practice.
22 This period of suspension will not apply to the reduction of this probationary time period.

23 If the respondent fails to have the above assessment submitted to the
24 Board within the 45-day requirement, respondent shall immediately cease practice
25 and shall not resume practice until notified by the Board. This period of
26 suspension will not apply to the reduction of this probationary time period. The
27 Board may waive or postpone this suspension only if significant, documented
28 evidence of mitigation is provided. Such evidence must establish good faith
efforts by the respondent to obtain the assessment, and a specific date for
compliance must be provided. Only one such waiver or extension may be
permitted.

19. Respondent's probation is subject to revocation because he failed to
comply with Probation Condition 18, referenced above. The facts and circumstances regarding
this violation are that Respondent failed to provide the Board with evidence of a completed
mental health examination by the due date of March 13, 2006.

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1 **SIXTH CAUSE TO REVOKE PROBATION**

2 **(Failure to Provide Evidence of On-Going Counseling)**

3 20. At all times after the effective date of Respondent's probation,
4 Condition 19, stated:

5 Respondent, at his expense, shall participate in an on-going counseling
6 program until such time as the Board releases him from this requirement and only
7 upon the recommendation of the counselor. Written progress reports from the
8 counselor will be required at various intervals.

9 21. Respondent's probation is subject to revocation because he failed to
10 comply with Probation Condition 19, referenced above. The facts and circumstances regarding
11 this violation are that Respondent failed to provide the Board with evidence of participation in an
12 on-going counseling program.

13 **SEVENTH CAUSE TO REVOKE PROBATION**

14 **(Failure to Comply with the Probation Program)**

15 22. At all times after the effective date of Respondent's probation,
16 Condition 2 stated:

17 Respondent shall fully comply with the terms and conditions of the
18 Probation Program established by the Board and cooperate with representatives of
19 the Board in its monitoring and investigation of the Respondent's compliance
20 with the Probation Program. Respondent shall inform the Board in writing within
21 no more than 15 days of any address change and shall at all times maintain an
22 active, current license status with the Board, including during any period of
23 suspension.

24 23. Respondent's probation is subject to revocation because he failed to
25 comply with Probation Condition 2, referenced above. The facts and circumstances regarding
26 this violation are that Respondent failed to comply with the Board's Probation Program, as set
27 forth in paragraphs 11 through 22 above, which are incorporated herein by this reference.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking the probation that was granted by the Board of Registered Nursing in Case No. 2004-46 and imposing the disciplinary order of revocation that was stayed, thereby revoking Registered Nurse License No. 461736 issued to Vernon Andrews; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 4/3/08


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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Exhibit A
Decision After Non-Adoption
Board of Registered Nursing Case No. 2004-46

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Vernon Andrews
21512 Kinsale Street
Lake Forest, CA 92630

Registered Nurse License No. 461736

Respondent.

Case No. 2004-46

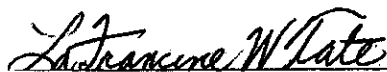
OAH No. L2003100520

DECISION AFTER NON-ADOPTION

The attached Decision After Non-Adoption is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on September 9, 2005.

IT IS SO ORDERED this 9th day of September, 2005.



Vice-President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

VERNON ANDREWS
21512 Kinsale Street
Lake Forest, CA 92630

Registered Nurse License No. 461736

Respondent.

Case No. 2004-46

OAH No. L2003100520

DECISION AFTER NON-ADOPTION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 18, 2005, in Riverside, California. Kevin M. Geoghegan, Senior Legal Analyst, Office of the Attorney General, State of California, represented Complainant Ruth Ann Terry, M.P.H., R.N., the Executive Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs, State of California. Respondent Vernon Andrews, R.N., represented himself and was present throughout the administrative hearing. The matter was submitted on February 18, 2005.

At its April 14, 2005 meeting, the Board voted not to adopt the decision of the Administrative Law Judge. Transcripts were ordered and received on June 2, 2005, and sent to all parties. Written arguments were requested on June 9, 2005, but were not submitted. After consideration of the whole record, including the transcript, the Board renders the following decision.

FACTUAL FINDINGS

License History

1. On March 31, 1991, the Board issued Registered Nurse License No. 461736 to Respondent Vernon Andrews. Andrews' registered nurse license was in full force and effect at all times mentioned herein and has been renewed.

There is no history of any administrative discipline against Andrews' registered nurse license.

Jurisdictional Matters

2. On August 7, 2003, complainant, signed the Accusation in her official capacity. The Accusation and other required jurisdictional documents were served on Andrews.

Andrews timely filed a Notice of Defense dated August 30, 2003.

The matter was set for hearing and was continued to February 18, 2005.

On February 18, 2005, the administrative record was opened. Jurisdictional documents were presented. Sworn testimony and documentary evidence was received. Closing arguments were given, the record was closed and the matter was submitted.

Andrews' Conviction

3. On June 8, 2000, Andrews was convicted on his deferred plea of guilty of violating Health and Safety Code section 11377, subdivision (a) (Possession of a Controlled Substance), Health and Safety Code section 11364 (Possession of a Smoking Device), Health and Safety Code section 11357, subdivision (b) (Possession of Marijuana), and Vehicle Code section 4463, subdivision (a) (Possession of Altered License Plate Tabs) in the Superior Court of California, County of Orange, Central Judicial District, in Case No. 00CF0803 FA entitled *People of the State of California v. Vernon Andrews, aka Vernon Andrews, Jr.*

In his written change of plea form, it was agreed that the drug-related charges would be handled under Penal Code section 1000, the Deferred Entry of Judgment Program. In his written change of plea form, Andrews admitted, "In Orange County on 3-18-00 I knowingly possessed a useable amount of methamphetamine."

As to the conviction of Vehicle Code section 4463, subdivision (a), Andrews was fined \$200, which he promptly paid.

As a part of his plea agreement to enter the Drug Court Program, Andrews wrote, "The People and I agree that upon successful completion by myself of the Drug Court Program, I will be allowed to withdraw my plea of guilty. The People further agree then they will then move to dismiss the complaint/information."

On June 12, 2002, imposition of sentence was suspended and Andrews was placed on three years probation, which was to be served through the Drug Court Program. The terms and conditions of his probation required Andrews to serve 180 days in custody (which was stayed pending the successful completion of probation, with 54 days of actual and good time credit), payment of a \$200 fine (which was stayed pending the successful completion of probation), and registration under Health and Safety Code section 11590 (which was stayed pending the successful completion of probation). He was ordered not to possess or use

unauthorized drugs, narcotics or controlled substances and to submit to random testing as required, and to submit to search and seizures as required. He was ordered to cooperate with probation officers, directed not to consume alcoholic beverages, and ordered to seek full-time education, training and/or employment or some combination thereof, to pay costs of probation, to pay lab analysis fees, and to obey all laws.

Andrews enrolled in the Drug Court Program. While Andrews relapsed on two occasions, for the most part Andrews' participation in the program was favorable.

On February 10, 2005, after finding Andrews' progress "continues to be favorable," the court ordered probation terminated. The court found Andrews had successfully completed the Drug Court Program. Andrews was permitted to withdraw his plea of guilty and the court vacated the judgment of conviction. The drug-related charges were dismissed on the prosecution's motion.

Circumstances of the Offense

4. Andrews testified he began using methamphetamine on a recreational basis in late 1999. He resumed smoking marijuana, a habit he had abandoned in his teens. By March 2000, Andrews' use of methamphetamine and marijuana had progressed from recreational use on weekends to the use of methamphetamine and marijuana several times a week; although not immediately before or while he was on the job.

On March 18, 2000, Andrews was staying at the Key Inn in Tustin, a hotel known to local law enforcement as a hotbed of drug-related activities. A Tustin police officer observed Andrews' blue Toyota Camry parked in the Key Inn's parking lot. The Toyota had a current license plate tab taped to the license plate, which was suspicious. The Department of Motor Vehicles reported the Toyota's registration was not renewed. The police officer looked through the Toyota's windows and observed a glass tube and some other drug paraphernalia inside. The police contacted Andrews, who was present at the Key Inn.

Andrews told the police he obtained the license plate tab from his girlfriend, who said she had obtained possession of it from others. Andrews permitted the police to search his room. A small amount of marijuana was found in Andrews' travel bag, along with a glass smoking pipe. Andrews was arrested. The police asked Andrews' permission to search his Toyota. Andrews gave his consent. A search of the Toyota resulted in the seizure of a small plastic baggie of methamphetamine and some paraphernalia.

Andrews was questioned at the police station. He was cooperative and admitted he had smoked marijuana and had used methamphetamine with a friend the evening before his arrest. He said a gram scale found in his car was a gift for the friend.

Andrews did not possess dangerous drugs for sale. The quantities seized from Andrews' hotel room and from his Toyota were small amounts consistent with personal use,

and the amounts that were seized were inconsistent with possession for sale. The dangerous drugs were not obtained from or through Andrews' employment at a registered nurse.

Andrews' Drug Use and Recovery

5. Andrews smoked marijuana occasionally in high school. He consumed alcoholic beverages. Several years later, some of his acquaintances used methamphetamine. Andrews was offered methamphetamine on several occasions before 1999, but declined.

In late 1999, Andrews and several long time acquaintances were rehearsing in a Karaoke studio. Andrews was offered methamphetamine and "eventually I gave in and tried it." Andrews began using methamphetamine on a recreational basis, but by March 2000, he was using methamphetamine and marijuana at least three or four times a week. Although Andrews did not use methamphetamine or other drugs before reporting to work or when he was working (he claimed he was sick if he was unexpectedly asked to report to work and when he thought he might be under the influence). Andrews admitted he worked on one occasion when he felt he might be under the influence and may not have had enough rest.

6. Following his arrest, Andrews was given the choice of entering the Drug Court Program and rehabilitating himself, or simply entering a plea and accepting the penal consequences imposed under traditional sentencing guidelines. Andrews chose to enter the Drug Court Program.

The Drug Court Program included residential and non-residential rehabilitation settings. Andrews attended Narcotics Anonymous and Alcoholic Anonymous meetings several times a week. He participated in frequent group counseling and had 1:1 counseling once a week. Andrews was tested for the presence of drugs at least three times a week.

Andrews relapsed on two occasions. He first relapsed in October 2002, following the death of a close friend who suffered from cancer. Andrews relapsed again in April 2004, which he believed was related to the influence of peers at a sober-living facility who were using drugs at the facility.

Following his second relapse, Andrews entered the Hope House, a residential care facility, in April 2004. Andrews successfully completed all three phases of the program and graduated from the facility on November 28, 2004.

Andrews claimed a sobriety birth date of April 15, 2004. Since then, he has not consumed alcoholic beverages and has not used narcotics, dangerous drugs, or controlled substances. He was subject to frequent random testing until he graduated from the Drug Court Program.

Andrews currently attends several AA meetings a week, mostly with other Hope House graduates (Andrews finds these meetings more helpful than NA meetings), as well as meeting with other nurses in recovery once a week on Monday nights. Andrews testified he

is very involved in his recovery program, has a sponsor with whom he meets with at least once a week, goes to the gym and works out on a regular basis, and provides counseling and other support to new residents at the Hope House.

7. A letter from Andrews' Public Defender supplemented and explained Andrews' testimony. That letter stated each participant in the Drug Court Program is placed on probation for three years and is required to report to a probation officer weekly, attend weekly group and individual counseling sessions, attend at least five 12-step meetings per week, report to court weekly, and either work or attend school on a full-time basis.

According to Deputy Public Defender Samantha Silverstone, "Mr. Andrews graduated from our Drug Court Program on February 10, 2005, and had all of his charges dismissed. I have represented Mr. Andrews throughout his participation in our Drug Court Program and have noticed some tremendous positive changes that he has made in his life."

8. Vernon Andrews, Sr., Respondent's father, testified. He said Andrews is a good nurse who has worked hard in his recovery and successfully completed the Drug Court Program.

Respondent's Testimony and Other Evidence

9. Andrews was born on November 29, 1959, in Tucson, Arizona, where he completed the 11th grade. Andrews moved to Southern California with his family, but he did not graduate from high school. He later obtained his GED.

Andrews worked in shipping/receiving in Costa Mesa and as a machinist and fork lift operator in Tustin. Andrews worked at the Fairview Developmental Center as a nursing aide. He loved being of service. Andrews obtained the education and experience necessary to obtain an LVN certificate, which was granted in 1983.

Andrews worked as an LVN from 1983 through 1991 in acute care settings and at Kaiser Permanente facilities. He ultimately began working for Orange Coast Hospital, which later became known as Family Health Plan.

Andrews' commitment to nursing was recognized by his employer, and Andrews was given a scholarship to attend Golden West College to obtain a registered nursing certificate. Andrews attended Golden West College from 1989-1991. He received his registered nurse license in March 1991.

10. Andrews worked with Family Health Plan, and then began working with a nursing registry in 1998 or 1999. Andrews worked as a transport nurse and critical care nurse with American Medical Response from 1999-2001, serving as the supervisor for two EMTs on a critical care transport unit.

11. Andrews suffered a shoulder injury resulting in his physical disability around the time he was arrested, which he now believes to have been a “blessing in disguise” because while he was on disability leave, Andrews was able to commit himself fully to a recovery program. Since then, Andrews returned to work for two nursing registries.

12. Andrews currently works 24-36 hours per week for the nursing registries. He is not supervised.

13. Andrews is single. He provides support to no one but himself.

14. Andrews was very interested in participating in the registered nurse diversion program, but he was unable to coordinate the Drug Court Program commitments with the registered nurse diversion program schedule. Andrews testified he was willing to enter that diversion program since his formal responsibilities to the Drug Court Program terminated.

Disciplinary Guidelines

15. In keeping with its obligation to protect consumers of nursing services from unsafe, incompetent or negligent registered nurses, the Board adopted recommended guidelines for violations of the Nursing Practice Act.

In imposing license discipline, the Board carefully considers the totality of the facts and circumstances of each case, with the safety of the public being paramount. The Board requests the Administrative Law Judge submitting a Proposed Decision clearly delineate the factual basis for his decision, which is especially important should the ALJ deviate from the Board’s recommended guidelines. The ALJ’s rationale for the deviation should be reflected in the Proposed Decision to enable the Board to understand and evaluate the appropriateness of the decision.

If the ALJ finds at the time of hearing that the licensee for any reason is incapable of safe practice, the Board favors outright revocation of the license. If, however, the licensee has demonstrated a capacity to practice safe nursing, then a stayed revocation with an order of probation is recommended.

16. In determining whether revocation, suspension or probation should be imposed in a given case, consideration of several factors is required. Those factors are applied and discussed in Factual Finding 18.

17. The criteria to be considered in determining a licensee’s rehabilitation for substance abuse and other drug related offenses include, but are not limited to the successful completion of drug/alcohol treatment program having a minimum of six months duration, individual and/or group counseling, random, documented biological fluid screening, participation in nurse (or other professionals) support group, education about addictive disease, adherence to a 12-step recovery program or its equivalent, written documentation of participation in 12-step recovery groups or its equivalent, employment in the nursing field for

a minimum of six months with documentation from the employer that the employer was aware of the previous drug or alcohol abuse problems and evidence there was no continued alcohol or drug abuse and that the respondent performed nursing functions in a safe and competent manner.

Andrews provided competent evidence to show he substantially complied with the rehabilitation criteria, except as those criteria related to documentation from his employer, that his employer was aware of the previous drug or alcohol abuse problems, while so employed there was no evidence of continued alcohol or drug use, and Andrews performed nursing functions in a safe and competent manner.

The Appropriate Measure of Discipline

18. In June 2000, Andrews had become addicted to methamphetamine. Thankfully, there was no harm to the public from his substance abuse, although there was certainly a potential for patient harm. Andrews' four drug-related convictions were expunged after Andrews completed the Drug Court Program, which included a chemical-free treatment philosophy, individual and group counseling, random, documented biological fluid screening, education about addictive disease, and adherence to a 12-step recovery program. Andrews claims a sobriety birth date of April 15, 2004.

Andrews has no other criminal record. Andrews does not have any other disciplinary record with the Board of Registered Nurses or the Board of Licensed Vocational Nurses and Psychiatric Technicians.

Drug addiction is often accompanied by relapse, as was the case here. While Andrews is currently clean and sober and while he poses no significant risk of harm to the public at this time, there is no guarantee that will remain the case in the future.

This was Andrews' first criminal contact. The misconduct giving rise to Andrews' contact with law enforcement occurred almost five years ago, although he relapsed twice since then.

Under all the circumstances, it would be appropriate to revoke Andrews' license, but to stay the revocation and place Andrews on five years probation. Terms and conditions of Andrews' probation will require him to obey all laws, pay costs of prosecution, to disclose the reason and the nature of his license discipline to any employer, prohibit him from working at a registry or in any other unsupervised setting, require him to report to a probation officer, require him to submit written reports concerning his compliance with probation and continue participation in an approved rehabilitation program, prohibit him from the use of alcohol and illegal drugs, require him to submit to random chemical testing (which he must pay for), and require him to submit to other testing and examinations as may be deemed appropriate by the Board.

The public will be adequately protected by such an order.

Reasonable Costs of Enforcement

19. A declaration by the Senior Legal Analyst who prosecuted the matter was offered to support an order directing Andrews to pay reasonable costs of enforcement.

The investigator's declaration stated 35.5 hours were spent in the enforcement of this administrative matter, at rates of \$53 per hour (for 23.25 hours) and at rates of \$91 per hour (for 12.25 hours). The time spent was not well explained, but it appeared reasonable under all the circumstances. The Senior Legal Analyst who presented the matter for the Board was well prepared. An award of prosecution costs of \$2,347 is reasonable.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a nursing license is "clear and convincing evidence." *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.

2. The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. *People v. Mabini* (2001) 92 Cal.App.4th 654, 662.

The Board's Authority to Impose License Discipline

3. Business and Professions Code section 490 provides in pertinent part:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued . . ."

4. Business and Professions Code section 2761 provides in part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct . . .

. . .

(f) Conviction of a felony or of any offense substantially related to the qualifications,

functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.”

5. Business and Professions Code section 2762 provides in part:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or . . . administer to himself or herself . . . any controlled substance . . . or any dangerous drug . . .

(b) Use any controlled substance . . . or any dangerous drug . . . or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license . . .”

Substantial Relationship

6. By enacting Business and Professions Code section 2762, the Legislature clearly expressed its belief there is a substantial relationship between the practice of nursing and the illegal possession and use of narcotics, controlled substances and dangerous drugs.

7. The illegal use of drugs reflects a lack of sound professional and personal judgment relevant to a registered nurse’s fitness and competence to practice nursing. The illegal use of drugs may threaten the nurse’s personal safety and may place the safety of the public in jeopardy. The illegal use of drugs shows a disregard of nursing knowledge about the use of controlled substances and dangerous drugs. It is not necessary for the misconduct forming the basis for discipline to have occurred in the actual practice of nursing. To postpone the imposition of license discipline until the nurse-licensee harms a patient or until the nurse-licensee is found under the influence on the job disregards many of the purposes of the Nursing Practice Act; it is far more desirable to discipline *before* a licensee harms any patient than after harm has occurred. See, *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757.

Penal Code Section 1000

8. Penal Code sections 1000-1000.5 authorize the courts to “divert” from the normal criminal process persons who are formally charged with first-time possession of drugs who are found to be suitable for treatment and rehabilitation at the local level. The purpose of such legislation is two-fold. First, diversion permits the courts to identify the experimental or tentative user before he becomes deeply involved with drugs, to show him the error of his ways by prompt exposure to educational and counseling programs in his own community, and to restore him to productive citizenship without the lasting stigma of a criminal conviction. Second, reliance on this quick and inexpensive method of disposition,

when appropriate, reduces the clogging of the criminal justice system by drug abuse prosecutions and thus enables the courts to devote their limited time and resources to cases requiring full criminal processing. *People v. Orihuela* (2004) 122 Cal.App.4th 70, 72.

9. Penal Code section 1000.4 - which is a part of the statutory scheme - provides in part:

“(a) . . . Upon successful completion of a deferred entry of judgment program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The defendant shall be advised that, regardless of his or her successful completion of the deferred entry of judgment program, the arrest upon which the judgment was deferred may be disclosed by the Department of Justice in response to any peace officer application request and that, notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.”

*The Use of Penal Code Section 1000 Convictions
And Arrest Reports Underlying Those Convictions*

10. May an administrative agency use a deferred drug diversion “conviction” under Penal Code section 1000-1000.5 – other than a conviction for a violation of Health and Safety Code section 11368 - as a basis for license discipline?

May an administrative agency use an arrest report related to a deferred drug diversion conviction to initiate a disciplinary action?

The Board rejects the Administrative Law Judge’s legal conclusions that Penal Code Section 1000 precludes the use of a “conviction” or arrest record as a basis for discipline.

11. Penal Code section 1000 provides in part:

“(d) Deferred entry of judgment for a violation of Section 11368 of the Health and Safety Code¹ shall not prohibit any administrative agency from taking disciplinary

¹ Health and Safety Code section 11368 provides:

“Every person who forges or alters a prescription or who issues or utters an altered prescription, or who

action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.4.”

By inference, an administrative agency may not take any disciplinary action against a licensee for any other drug-related convictions for which diversion might be granted under the deferred entry of judgment program. However, Business and Professions Code Section 492 constitutes an exception to the prohibition set in Penal Code Section 1000.4, and entitles the Board to prosecute such actions. Section 492 provides in relevant part;

“Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, ... shall not prohibit any agency established under division 2 (commencing with Section 500) of this code, ... from tacking disciplinary action against a licensee or denying a license from professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest...

The Board may thus utilize the deferred “conviction”, in addition to the arrest report for disciplinary purposes.

Cause Exists to Discipline Andrews’ License

12. Cause does exist under Business and Professions Code sections 490 and 2761, subdivision (f) to revoke Andrews’ registered nurse license on the basis of a “conviction.” The “conviction” referred to in the pleadings was obtained under the provisions of Penal Code section 1000 et seq., and the “conviction” can be used as the basis for license discipline pursuant to Business and Professions Code section 492 even if Andrews successfully completed the diversion program on February 10, 2005.

This conclusion is based on Factual Findings 2 and 3 and on Legal Conclusions 1-4 and 8-11.

13. Cause exists under Business and Professions Code section 2762 to impose discipline against Andrews’ nurse license for unprofessional conduct. The clear and convincing evidence - independent of the guilty plea that was withdrawn and independent of the arrest report giving rise to Andrews’ participation in the diversion program - established Andrews unlawfully possessed and administered to himself methamphetamine and marijuana on March 17, 2000 and that his use of those drugs constituted a danger to himself.

This conclusion is based on Factual Findings 1, 2, 4 and 5 and on Legal Conclusions 1, 2, and 5-11.

issues or utters a prescription bearing a forged or fictitious signature for any narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or altered prescription, or who has in possession any narcotic drug secured by a forged, fictitious, or altered prescription, shall be punished by imprisonment in the county jail for not less than six months nor more than one year, or in the state prison.”

The Measure of Discipline

14. Cause exists under Business and Professions Code section 2762 to take the following discipline against Andrews' nurse license for unprofessional conduct: Revocation, stayed, with five years probation on appropriate terms and conditions of probation.

This conclusion is based on Factual Findings 1, 2 and 4-18 and on Legal Conclusions 1, 2, 5-11, and 13.

Recovery of Costs

15. Business and Professions Code section 125.3 provides in pertinent part:

“(a) . . . in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

(d) . . . The administrative law judge shall make a proposed finding of the amount of the reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a) . . .”

16. Cause exists under Business and Professions Code section 125.3 to issue an order directing respondent to pay \$2,347 for the Board's reasonable costs of investigation and prosecution.

This conclusion is based on Factual Finding 20 and on Legal Conclusions 16-18.

ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 461736 issued to Respondent Vernon Andrews, also known as Vernon Andrews, Jr. is revoked. However, the order of revocation is stayed and respondent is placed on probation for five (5) years on the following conditions.

Each condition of probation contained herein is a separate and distinct. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) **OBEY ALL LAWS** - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) **COMPLY WITH THE BOARD'S PROBATION PROGRAM** - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

(3) **REPORT IN PERSON** - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) **RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing license during the term of probation.

(5) **SUBMIT WRITTEN REPORTS** - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, “engage in the practice of registered nursing” may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent’s probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his or her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent’s level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative

methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- (d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE(S) - Respondent, at his or her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

(11) COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$2,347. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

(12) VIOLATION OF PROBATION - If a respondent violates the conditions of his/her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(13) LICENSE SURRENDER - During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

One year for a license surrendered for a mental or physical illness.

(14) PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, respondent, at his/her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation.

Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Respondent, at his/her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed

within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(16) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS -

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(17) SUBMIT TO TESTS AND SAMPLES - Respondent, at his/her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and

samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

(18) MENTAL HEALTH EXAMINATION - The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.


If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish

good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(19) THERAPY OR COUNSELING PROGRAM - Respondent, at his/her expense, shall participate in an on-going counseling program until such time as the Board releases him/her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

DATED: September 9, 2005 .



LaFrancine Tate
Board of Registered Nursing

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10
11 **BEFORE THE**
12 **BOARD OF REGISTERED NURSING**
13 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

14 In the Matter of the Accusation Against:

Case No. 2004-46

15 VERNON ANDREWS
21512 Kinsale Street
16 Lake Forest, California 92630

ACCUSATION

17 Registered Nurse License No. 461736

18 Respondent.
19

20 Complainant alleges:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
23 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
24 Department of Consumer Affairs.

25 2. On or about March 31, 1991, the Board of Registered Nursing issued
26 Registered Nurse License Number 461736 to VERNON ANDREWS (Respondent). The
27 Registered Nurse License was in full force and effect at all times relevant to the charges brought
28 herein and will expire on December 31, 2004, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2761 of the Code states:

"The board may take disciplinary action against a *certified or licensed nurse* or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

6. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or

1 injurious to himself or herself, any other person, or the public or to the extent that such use
2 impairs his or her ability to conduct with safety to the public the practice authorized by his or her
3 license."

4 7. Health and Safety Code Section 11170 provides that no person shall
5 prescribe, administer, or furnish a controlled substance for himself or herself.

6 8. Section 4463(a) of the Vehicle Code provides that any person who, with
7 intent to prejudice, damage or defraud, or who alters, forges, counterfeits, or falsifies any
8 certificate of ownership, registration card, certificate, license, or license plate is guilty of a felony
9 and upon conviction thereof shall be punished by imprisonment in the state prison or in the
10 county jail.

11 9. Section 125.3 of the Code provides, in pertinent part, that the Board may
12 request the administrative law judge to direct a licensee found to have committed a violation or
13 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
14 and enforcement of the case.

15 10. **"DRUGS"**

16 "Cannabis" is a Schedule I controlled substance as designated by Health and
17 Safety Code section 11357(b).

18 "Methamphetamine" is a Schedule II controlled substance pursuant to Health and
19 Safety Code section 11377(a).

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Conviction of a Crime)**

22 11. Respondent is subject to disciplinary action under section 2761(a) and (f)
23 in that on or about June 12, 2002, Respondent was convicted on his plea of guilty of violating
24 Health and Safety Code section 11377-Possession of Controlled Substance, Health and Safety
25 Code section 11364-Possession of a Smoking Device, Health and Safety Code section
26 11357(b)-Possession of Marijuana, 28.5 grams or less, Business and Professions Code section
27 4060-Possession of Controlled Substances without Prescription; and Vehicle Code section
28 4463(a)-Alter, Forge and Falsify License Plate Tabs, misdemeanors. The circumstances are as

1 follows:

2 12. On or about March 18, 2000, while patrolling the parking lot of the Key
3 Inn, which is noted for drug activity, a Tustin Police Officer ran a computer check on
4 Respondent's parked Toyota Camry and found the license plate to be tagged with a 2000 false
5 registration tag. After conducting a further search of Respondent's car and hotel room, the
6 Officer found Respondent in possession of a package of Zig Zag rolling papers, a clear plastic
7 baggie containing .03 grams of Marijuana, a pipe used for Methamphetamine, a clear plastic
8 baggie containing Methamphetamine, and a "gram scale," and Respondent made admissions to
9 smoking Marijuana and Methamphetamine in his hotel room on March 12, 2000, and to having
10 smoked Methamphetamine in his car on March 15, 2000.

11 **SECOND CAUSE FOR DISCIPLINE**

12 ***(Use of Controlled Substances in a Manner Dangerous***
13 ***or Injurious to Himself or to the Public)***

14 13. Respondent is subject to disciplinary action under section 2762 (a) and (b)
15 and Health and Safety Code section 11170 in that Respondent possessed and used controlled
16 substances to an extent or in a manner dangerous or injurious to himself or any other person or to
17 the public, as described in paragraph 12 and 13 above.

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1 PRAYER


2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 461736, issued
5 to VERNON ANDREWS;

6 2. Ordering VERNON ANDREWS to pay the Board of Registered Nursing
7 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.

10 DATED: 8/7/03

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13 RUTH ANN TERRY, M.P.H., R.N.
14 Executive Officer
15 Board of Registered Nursing
16 Department of Consumer Affairs
17 State of California
18 Complainant
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